

BID SPECIFICATIONS (Revised 5/28/2013 & 5/31/2013)

NOTE: All revisions appear in bold italics

RIVER TUBE CONCESSION

The Department is seeking responses to this request for proposal from a qualified Bidder to operate a recreational floating or River Tubing Concession within the Delaware and Raritan Canal State Park ("Area"), Kingwood Township, New Jersey. The winning bidder shall be the qualified, responsible, and experienced bidder whose proposal is most responsive to the State's goal, price and other factors considered.

ADVISORY UNSCHEDULED CLOSURES

All Bidders are hereby advised that the State Park Service facilities are subject to unscheduled closures for reasons of health and public safety. These closures may result from inclement weather or water quality. No abatements will be given for interruption of Concession Activities.

DEFINITIONS

Concessionaire and Bidder shall be equivalent for purposes of this specification.

QUESTIONS AND INQUIRIES

The Department will accept questions and inquiries from all potential Bidders. Questions may be submitted in writing only, via mail or email, to the Department at the following address:

Department of Environmental Protection
Natural and Historic Resources
Office of Leases
Attention: George Chidley, Acting Administrator
501 E. State Street
P.O. Box 420, 501-04C
Trenton, NJ 08625-0420

Send email to: officeofleases@dep.state.nj.us

No questions will be accepted after May 15, 2013.

SCOPE OF CONCESSION

A. The Concessionaire shall be granted the exclusive right to rent River Tubes for recreational floating down the Delaware River, including reserved bus loading areas, ingress and egress from the river at designated points within the Delaware and Raritan Canal State Park (hereinafter referred to as the "Concession Operation"). The Concession Operation shall be limited to the existing infrastructure including path systems, roads, structure(s) and area(s) now provided by the Department of Environmental Protection ("Department") for concession purposes in the areas specifically designated by the Department (hereinafter referred to as the "Concession Premises").

B. Concessionaire shall use the Concession Premises solely for the purpose set forth above and is prohibited from selling or permitting the sale of any food, beverage, novelties and alcoholic beverages thereon.

C. Concessionaire shall ensure that Concession Operations are scheduled to minimize the impacts on State Park operations and do not interfere with the peaceful public enjoyment of the Delaware and Raritan Canal State Park.

D. Concessionaire shall ensure that all patrons for the Concession are delivered from the Concessionaires offsite administration facility to the Concession Premises and returned at the conclusion of the float. Concession Operations must prominently post a notice at the

Concessionaires administration facility and advise all patrons and employees that they are required to park at the Concessionaires administration facility. Failure on the part of the Concessionaire to conform to this requirement shall be sufficient justification for suspension or termination of the Concession Agreement.

E. Concessionaire's status will be that of a licensee. Concessionaire will not, in any way whatsoever, be granted or conveyed any permanent easement, lease, fee, or other interest in the Concession Premises.

REQUIREMENTS

The Concessionaire must provide the following:

- Demonstrate a minimum of three (3) years in experience in successfully operating a river tube rental or boat livery. The Concessionaire must provide a detailed description of the operation and annual revenue.
- Demonstrate that the Concessionaire has sufficient resources to safely operate the Concession. The Concessionaire shall provide an organizational chart including number of managers, administrative staff, field staff presently employed (by name & title) and number of employees full and part-time that will be employed to carry out the Concession Operation as described below. All employees holding certifications and licenses required by this specification must be identified.
- Demonstrate that the Concessionaire has an adequate stock of River Tubes and Personal Flotation Devices (PFD) available or the means to acquire them, to accommodate **50,000** patrons over the course of the season. The Concessionaire must provide a photo and description of the River Tube that will be used, including its dimension and carrying capacity.
- Demonstrate that the Concessionaire owns or leases a minimum of three (3) buses legally each capable of transporting thirty-five (35) passengers. The Concessionaire must provide a photo of each vehicle and the year of manufacturer, make, and model and vehicle registration number.
- Demonstrate that the Concessionaire owns or leases a minimum of three (3) vessels each capable of navigating all areas in the Delaware River and along the shore line. The Concessionaire must provide a photo of each vessel and the year of manufacturer, make and model and vessel registration number.
- Concessionaire must submit a cost proposal meeting the minimum requirements set forth in **REVENUE PAYMENTS AND ANNUAL INCREASE** below.
- Concessionaire must demonstrate that they have administrative and parking facilities located outside of the Concession Premises to load patrons on busses, collect River Tube fees and accommodate parking patron motor vehicles.
- Concessionaire must provide a statement acknowledging that patron parking is not permitted on the Concession Premises.

TERM

The "Initial Term" of the Concession Agreement ("Agreement") shall be from the Effective Date of the Agreements Initial Term ending on September 30, 2013. Upon expiration of the Initial Term the Concessionaire may request and the Department may at its discretion, based upon an evaluation of the Concessionaire's performance with the terms and conditions of the Agreement, grant not more than six (6) subsequent annual one (1) year renewal Terms. The Department reserves the right to terminate the Agreement for material breach in accordance with the terms and conditions set forth in Paragraph 4 in the Agreement. Furthermore, failure on the part of the Concessionaire to submit Monthly Concession Reports or the Annual Report when due constitutes a material breach of the Agreement subject to Termination in accordance with the terms and conditions set forth in Paragraph 4 in the Agreement.

EFFECTIVE DATE

A. For the purposes of the Agreement, the Effective Date for the commencement of the Initial Term shall be the Permit Date indicated on the Agreement.

B. For the purposes of the Agreement, the Effective Date for the commencement of any annual renewal term shall be the date on which the last of the following has occurred:

- (i) The renewal agreement is signed on behalf of Concessionaire and Department; and
- (ii) Department dates the renewal agreement and forwards a copy to Concessionaire; and
- (iii) The Certificate of Insurance required under the Agreement is approved by Department; and
- (iv) Department has approved the proposed prices for River Tube Rental.

TERMINATION

A. Concessionaire shall exercise direct and personal supervision of the operation of the Concession Premises described in this Specification. Failure to exercise such supervision and/or the existence of any condition at the facility or in the operation of the concession which Department determines to be in violation of the terms and conditions of this Specification shall be considered to be a material breach in which event Department may terminate this Specifications by written notice. Upon receipt of written notice of termination for violation, Concessionaire shall have such period of time as provided therein to cure such violation. If such violation is not cured within the period designated in said notice, termination shall, in the discretion of Department, be effective at the conclusion of the designated period.

B. Without limiting the scope of subparagraph A of this Paragraph, the Agreement shall terminate in the event of Concessionaire's failure to pay on the first (1st) of each month, when due, any compensation or other sums to be paid by Concessionaire under this Agreement and the continuation of such failure to pay for a period of five (5) days after Concessionaire's receipt of written notice thereof from Department.

C. Concessionaire may terminate the Agreement by ninety (90) days written notice to Department sent by certified mail return receipt requested. Such termination shall, at the discretion of Department become effective, either ninety (90) days after receipt of the notice of termination, or upon selection by Department of a new concessionaire, whichever occurs sooner. In the meantime, Concessionaire shall continue to operate the concession in accordance with the terms and conditions of the Agreement. Department shall commence the process of selecting a new concessionaire immediately upon receipt of the notice of termination.

D. If at any time during the term of the Agreement, Concessionaire shall make any assignment for the benefit of creditors or be decreed insolvent or bankrupt according to law, or if a receiver shall be appointed for Concessionaire, then Department may terminate the Agreement by notice served upon the assignee, receiver, trustee or other person in charge, but such termination shall not release or discharge any payment or obligation then owed by Concessionaire to Department hereunder.

E. Termination of the Agreement by either party as herein provided shall not release or discharge any payment obligation or liability owed to the other party under the terms and conditions of the Concession Agreement as of the date of such termination.

F. Upon the expiration or any termination of the Agreement, Department may at once re-enter and remove any and all persons and equipment occupying the Concession Premises. If Concessionaire fails to remove any property lawfully belonging to and removable by Concessionaire upon any notice of termination hereof, or before the stated expiration of the Agreement, Department may appropriate same to its own use without allowing any compensation therefor, or may remove same at the expense of Concessionaire. In the event that Concessionaire

removes any personal property, Concessionaire hereby covenants to pay any and all damages which may be caused to the property of Department by this removal.

REVENUE PAYMENTS, ANNUAL INCREASE AND COMPENSATION ANALYSIS

A. For the Initial Term of this Agreement, Concessionaire agrees to pay compensation as indicated below:

1. **Minimum Annual Fee:** One Hundred Thousand (\$100,000.00) Dollars. The Minimum Annual Fee will be made in equal installments due on the first day of each month from May 1st through September 1st of each year.

2. **Final Adjusted Payment:** The per-person rate will be the amount submitted by bidder equal to or greater than the minimum **Two (\$2.00) Dollars per person rate established by the Department** or the per-person rate amount submitted by the Bidder. Final Adjust Payment will be based on the following formulas:

(a.) Per-Person Rate (bid amount) multiplied by the Number of Persons renting River Tubes equals the Total Compensation (Per-Person Rate x Number of Persons Renting Tubes = Total Compensation).

(b.) The Final Adjusted Payment shall be the difference between the Total Compensation and the Minimum Annual Fee (Total Compensation less the Minimum Annual Fee = Final Adjusted Payment). Final Adjust Payment will be due on or before November 1st of each year.

Said compensation shall be paid according to the following payment schedule:

TERM PAYMENT SCHEDULE:	<i>May</i>	<i>1</i>	<i>(\$10,000.00)*</i>	
	<i>June</i>	<i>1</i>	<i>(\$15,000.00)</i>	
	<i>July</i>	<i>1</i>	<i>(\$25,000.00)</i>	
	<i>August</i>	<i>1</i>	<i>(\$25,000.00)</i>	
	<i>September</i>	<i>1</i>	<i>(\$25,000.00)</i>	
	November 1		(Final Adjusted Payment based on River Tube Rentals)	

***Year one Term Payment Schedule will be adjusted based on the effective date of the Agreement.**

B. ***SECTION DELETED***

C. After the expiration of the third (3rd) annual renewal term of the Agreement, a compensation analysis may be performed by the Department to determine if the compensation amount will be increased, decreased, or remain the same for the next renewal term. Based on the reported Total Gross Revenue and/or performance of the concession, the Department may choose to increase, decrease, or maintain the compensation amount. The total amount of annual compensation will be analyzed and may be adjusted to correspond with the Department's existing rental rates for similarly performing operations.

D. All payments shall be submitted by check made payable to **"Treasurer - State of New Jersey"** and be **received** on or before scheduled payment date to:

Department of Environmental Protection
Natural & Historic Resources
Office of Concessions
Mail Code: 501-04C, PO Box 420
Trenton, New Jersey 08625-0420

If Concessionaire fails to pay said compensation at such time and in such manner as specified herein, such failure shall constitute grounds for termination of the Agreement.

E. The Department may at its discretion, require new Concessionaires with limited or no prior experience to make all payments for the Initial Term of the Agreement by certified or cashier's check only.

F. All past due payments shall be assessed a monthly penalty of one and one-half (1.5%) percent of the total amount due calculated based on the minimum payment amounts.

G. In the event any check for payment is returned to Department, all future compensation payments must be made by certified or cashier check only.

RECORDS AND AUDIT

A. Concessionaire shall maintain complete, accurate, and detailed accounting records of all transactions pertaining to each Concession Operation covered by this Agreement that will allow Concessionaire to prepare financial statements in accordance with generally accepted accounting principles. Concessionaire shall make such records available to any authorized representative of Department upon request, as often as it is deemed necessary by Department, to determine the effectiveness of the financial management system and internal procedures that have been established by Concessionaire to ensure compliance with the terms and conditions of the Agreement and that the financial statements, cash register receipts, and reports present fairly the results of Concessionaire's operations pursuant to the Agreement. Said records shall be maintained and made available to Department for a period of six (6) years after the termination or expiration of the Agreement.

B. All sales shall be recorded by means of cash registers that publicly display the amount of each sale and automatically issue a customer's receipt or certify the amount recorded on a sales slip. Said cash registers shall, in all cases, have locked-in sales totals and transaction counters that constantly accumulate and that cannot, in either case, be reset. In addition, such cash registers must have a tape located within the register upon which transaction numbers and sales details are imprinted. Beginning and ending cash register readings shall be recorded on a daily basis. In the event of technical or electrical failure of the cash registers, Concessionaire shall record all transactions by hand and issue a sequentially pre-numbered customer's receipt in like manner.

Each cash register must have the following:

- Dual Tape/Readable tape (customer must be offered a receipt)
- Customer Display
- Continuous grand total
- Current printed date on detail tape

DAILY RECEIPTS AND BANK ACCOUNT

A. Under the Agreement, Concessionaire is required to maintain a daily record of all gross receipts derived from the Concession Operation. This record shall be available at all times. Concessionaire also shall maintain daily "Z" reports that provide a breakdown and accounting of all sales activity for each day.

B. All cash received by Concessionaire shall be deposited into a single bank account, maintained at a bank located within the State of New Jersey and maintained solely for subject Concession Operation, through which all financial transactions (including but not limited to deposits, withdrawals, and purchases) must pass.

MONTHLY REPORT

On or before the tenth (10th) of each month during operation, Concessionaire shall provide Department with the following: a "Monthly Concession Report" containing a Statement of Total Number of Patrons; Total Gross Receipts, excluding New Jersey State Sales Tax, derived by Concessionaire from operation of the Concession and any other Concession-related operation approved by Department during the previous month. Failure on the part of the Concessionaire to submit a Monthly Concession Report when due, constitutes a material breach of the Agreement subject to suspension or termination.

ANNUAL REPORT

Concessionaire shall submit to Department, no later than November 1st of each term the Agreement is in effect, an Annual Financial Statement including the following: Total Number of Patrons; Total Gross Revenue; Cost of Sales; Operating Expenses; and Net Profit from State Park Concession Operations. Failure on the part of the Concessionaire to submit Annual Report when due, constitutes a material breach of the Agreement subject to suspension or termination.

HOURS OF OPERATION AND LIMITATIONS

The Concession shall be open for business Sunday through Saturday from May 1, 2013 to September 30, 2013. The Concession shall operate daily between the hours of 9:00 am through 5:00 pm. No Concession operations shall take place before sunrise or after sunset. Failure on the part of the Concessionaire to operate within the designated time frames will be a material breach of the Agreement in which event the Department may terminate this Agreement. The area Superintendent shall be the sole authority to determine whether or not an area will be closed due to inclement weather. The Department is not responsible to Concessionaire for any loss or damage caused by such determination.

ALTERNATE HOURS OF OPERATION

The Concessionaire may request authorization to extend the hours of operation, by opening before 9:00 am or closing after 5:00 pm. All requests to extend hours of operation must be made in writing to the Director, State Park Service ten (10) days in advance of the proposed effective date. The Concessionaire shall not implement the alternate hours of operation without written authorization from the Director, State Park Service.

The Concessionaire shall not operate the Concession when the Delaware River is predicted to flood by the National Oceanic and Atmospheric Administration (NOAA). The concessionaire shall not operate the Concession when the Delaware River exceeds five (5) feet above normal on the NOAA hydrograph at Reigelsville.

EXTENSION OF THE SEASON

The Concessionaire may request to extend the period of operation either before May 1st or after September 30th. All requests shall be submitted to the Director, State Park Service and Office of Concessions in writing sixty (60) days in advance of implementation. Approval of this request shall be within the Department's sole discretion. The Concessionaire shall be deemed not have permission to extend the period of operation without written approval from the Director, State Park Service and Office of Concessions.

PRICES

All prices for River Tube and equipment rentals shall be submitted to and approved by Department in writing before any proposed price can become effective. Proposed prices to be charged must be submitted and approved at least thirty (30) days prior to initial opening of the Concession and on a yearly basis thereafter for the duration of the Agreement. All prices shall be properly displayed in prominent places at all times.

CONCESSION STAFF

A. Concessionaire shall engage a sufficient number of reliable, competent, and qualified staff of legal age for operation and management of each concession location covered by the Agreement, to provide security for the staff, and to meet the needs of the public unless an alternative staffing plan is approved by the *Department* in writing. Said approved alternative staffing plan shall be attached to and made a part of the Agreement. If Department determines that Concessionaire has not provided a sufficient number of reliable, competent, and qualified staff of legal age for the operation and management of the Concession Premises, Concessionaire shall, immediately upon receipt of written notification from Department, correct the staffing deficiencies described in said notice. If the deficiencies described in said notice are not corrected by Concessionaire immediately upon receipt of written notification, Department reserves the right to do the following: (1) suspend Concessionaire's operation of the Concession Premises, pending

correction of the deficiencies; (2) obtain the service of reliable, competent, and qualified staff of legal age to operate said concession facility for Concessionaire for the remainder of the then current operating season; or (3) terminate the Agreement. Concessionaire shall not be entitled to any abatement of revenue payment due to any suspension or other action taken by Department under this Paragraph, and Department shall not be liable to Concessionaire, or any party claiming through Concessionaire, for any claim, liability, or damages resulting from said action by Department.

B. All Concession employees must wear apparel and name tags to identify and distinguish them as concession employees. The type of apparel and identification shall be pre-approved by Department.

C. All Concession vehicles and River Tubes must identify the name, address, telephone number of the Concessionaire. The Concessionaire may at its option include the email address or web site for Concession.

D. ***Concessionaire must submit documentation to the Department demonstrating that that a minimum of three (3) staff employees are certified in the proper administration of CPR and First Aid and will be present during Concession Operations.***

E. ***Concessionaire must submit documentation to the Department demonstrating that that a minimum of three (3) staff employees are Red Cross Certified Life Guards and will be present during Concession Operations.***

F. Concessionaire must submit documentation to the Department demonstrating that that a minimum of three (3) staff employees are United States Coast Guard Qualified Pilots or possess a certificates in water craft safety. Each staff person operating the vessel shall be United States Coast Guard Qualified Pilot or possess a certificate in water craft safety.

G Concessionaire shall ensure that all motor vehicle operators possess the appropriate licensing for the weight and class of vehicle driven. The Concessionaire shall provide information related to all licenses upon request from the department.

COMPLIANCE AND PERFORMANCE EVALUATION

Mandatory concessionaire evaluation and compliance review meetings shall be conducted annually during three (3) specified periods. The meetings shall review all aspects of the operation insuring that quality public services are being provided on a continuing basis in accordance with the bid specifications and the Agreement, that operational problems/concerns are addressed on a timely basis, and that all terms and conditions are clearly understood. The meetings shall be held on site with appropriate State Park Service staff, the on-site concession manager, and a management/supervisory representative of the concession firm. An evaluation form shall be utilized to document the evaluation meeting, which will identify any deficiencies and the corrective action required. A copy of the completed evaluation form shall be provided to the on-site concession manager or the management/supervisory representative of the concession firm and shall be attached to and made a part of the Agreement. The mandatory meetings shall be conducted annually during the following periods:

- Meeting #1 - During the month of May, prior to Memorial Day weekend.
- Meeting #2 - During the first two (2) weeks of July.
- Meeting #3 - During the two (2) weeks immediately after Labor Day.

RIVER TUBE CONCESSION EQUIPMENT

A. Concessionaire shall provide an adequate amount of River Tubes to meet the public demand for floating along the six (6) mile stretch on Delaware River adjacent to the Delaware and Raritan Canal State Park, between the Kingston Boat Launch and Point Pleasant Parking Area. Motorized boats of any type are not permitted for rental by the Concessionaire. Concessionaire shall provide Coast Guard approved personal flotation devices (PFDs) for every patron renting a River Tube. Concessionaire also shall provide any other equipment and devices as may be required by the U.S. Coast Guard and the Department. All River Tubes and equipment to be rented or provided by the Concessionaire must be approved by Department prior to usage. All River Tubes boats must be marked and clearly identifiable.

B. Concessionaire must provide the necessary personnel and equipment to be able to respond to situations involving rented River Tubes, disabled River Tubes, and retrieval of rented River Tubes, etc. during all hours of Concession operation.

C. Concessionaire must have a minimum of three (3) emergency patrol vessels, ***one (1) shall be positioned*** along the six (6) mile route to ensure the health and safety of Concession patrons, when the concession is in operation. The vessels must have a shallow draft that will enable them to access all areas of the River. The Concessionaire shall provide a photograph of each vessel that will be used for this purpose. In addition, the Concessionaire shall provide the manufacturer, model and registration for all vessels that will be used by Concession. Each staff person operating the vessel shall be United States Coast Guard Qualified Pilot or possess a certificate in water craft safety.

D. Concessionaire must have radio communication or cell phone communication available for the operators of its busses, and vessels. Each operator shall carry emergency numbers including, but not limited to, State Park Superintendent, State Park Office, State Park Police and Local Emergency Rescue, Police and Fire.

E. Department owned equipment has been installed on the Concession Premises for use by Concessionaire to provide full, complete, and efficient service to the public. Concessionaire shall be responsible for providing any and all temporary and additional equipment. However, Concessionaire shall first submit a written request to and obtain the written approval of Department for the installation and use of said equipment.

F. Concessionaire shall not be authorized to store any supplies, goods or equipment related to the operation of the concession on the Concession Premises. The Department shall not be responsible or liable for any loss or theft of goods or equipment.

G. Department shall not be responsible for any damages, loss of goods or services resulting from equipment failure. The Concession is encouraged to obtain insurance to cover possible losses.

H. Concessionaire shall be responsible for removing to a safe location all equipment including the temporary stair, which shall be removed by the Concessionaire when the Delaware River is predicted to flood by the National Oceanic and Atmospheric Administration (NOAA). The Concessionaire shall not re-install the temporary stairs until the Delaware River drops below the five (5) feet above normal level on the NOAA hydrograph at Reigelsville.

I. Concessionaire has the option to pay an **additional ANNUAL COMMERCIAL BOAT LAUNCH FEE (ANNUAL COMMERCIAL FEE) of \$250.00 per vessel** to launch emergency patrol vessels during the period that the Concession is open for business (including approved Extension of the Season) utilizing State Park Service boat launches. The **ANNUAL COMMERCIAL FEE** is subject to annual adjustments and will be payable to the Department on or before May 1st of each annual term.

J. Concessionaire has the option to rent Canoes, Kayaks and Rafts at the same fee established for River Tubes and under the same requirements and conditions. The Concessionaire shall submit a plan for Canoe, Kayak and Raft rental operations to the Department for written approval. Any approvals granted by the Department to the Concessionaire permitting the rental of Canoes, Kayaks and Rafts shall not be exclusive. No rentals are permitted without an approved plan.

CONCESSION PREMISES

- A. Concessionaire shall, be granted access to utilize the following areas for River Tube ingress:
- Kingwood Boat Launch
 - Fairview Parking Area

Access to the foregoing shall be limited to internal path systems and Delaware River access points designated by the Department. The Department shall provide reserved Concession loading

areas for a maximum of two (2) Busses at each location. All Busses must be owned and operated by the Concessionaire. The Department shall designate and sign the onsite reserved Concession loading areas. The Concessionaire is not permitted to load passengers or equipment in areas that are not designated by the Department for that purpose. The Concessionaire may at its own expense and with the written approval of the Department, construct additional parking to accommodate Concession activities. Final approval for all Construction is subject to all Federal, State and other agency or outside approvals.

B. Concessionaire shall, be granted access to utilize the following area for River Tube egress:

- Point Pleasant Parking Area

Access to the foregoing shall be limited to existing internal path systems and approved Delaware River access points designated by the Department. The Department shall provide a reserved Concession loading area for a maximum of two (2) Busses at this location. All Busses must be owned and operated by the Concessionaire. The Department shall designate and sign the onsite reserved Concession loading area. The Concessionaire is not permitted to load passengers or equipment in areas that are not designated by the Department for that purpose. The Concessionaire may at its own expense and with the written approval of the Department, construct additional parking to accommodate Concession activities. Final approval for all Construction is subject to all Federal, State and other agency or outside approvals.

MAINTENANCE OF CONCESSION PREMISES

A. Concessionaire shall preserve and maintain in good and clean condition, reasonable wear and tear excepted, of the Concession Premises. Concessionaire is solely responsible for the maintenance and cleanliness of the Concession Premises, including the temporary stairs.

B. Concessionaire shall routinely maintain all Department designated path systems and reserved parking areas, including but not limited to filling holes, repairing washouts, removal of fallen branches, removal of all debris on the path and trimming overhanging or encroaching vegetation to ensure unobstructed safe access to the designated points of ingress and egress. Extraordinary damage to the Concession Premises resulting from natural disaster or flooding shall be the responsibility of the Department to the extent that funding and resources are available to undertake the necessary repairs.

C. Upon expiration or termination of the Agreement, Concessionaire shall deliver up peaceable possession of the Concession Premises to Department in as good and clean condition as the Concession Premises was made available at the commencement of the Agreement, reasonable wear and tear excepted. In the event that Concessionaire does not deliver up possession as herein provided, Department may restore the Concession Premises to such condition, and the cost thereof shall be paid by Concessionaire to Department within ten (10) days of Department's demand for payment.

ROUTINE MAINTENANCE PLAN

Concessionaire shall, prior to the commencement of Concession Operations under this Agreement, provide to Department a written routine maintenance plan for the Concession Premises, together with a schedule for all routine maintenance. Failure to comply with this routine maintenance schedule shall result in the closure of the Concession until the required maintenance is completed in a manner acceptable to the Department. The Department inspection of each Concession Premises will be conducted at minimum during the pre-season, mid-season and year-end concession close out for the Concession.

INSPECTION

Concessionaire shall make the Concession Premises available for inspection at any time by any authorized representative of Department to assure compliance with the terms and conditions of this Agreement.

CONSTRUCTION AND IMPROVEMENTS

Concessionaire shall be responsible for all costs related to erecting temporary stairs at the two (2) points for ingress and egress to the Delaware River designated by the Department for the Concession Activity. The point for ingress is Fairview Parking Area and the point for egress is the Point Pleasant Parking Area. The designs and scaled construction drawings for the temporary stairs shall be submitted to the Department for review and approval prior to installation. The drawings shall include detailed drawings of the footings and/or anchoring that will be used to secure the stairs when in use. All temporary stairs shall meet the Uniform Construction Codes. Each temporary stair must have permanently attached rails, one on each side of the stair case. All step treads must have non-slip surfaces. The Concessionaire shall address access for persons with disabilities pursuant to the Americans with Disabilities Act, 42 U.S.C. §§ 12102-12213. The Concessionaire shall be responsible for obtaining all Department and other government or agency written approvals and permits prior to installation of the temporary stairs.

Concessionaire shall not erect any structures, buildings, additions or construct parking, roads or turning areas on the Concession Premises without first obtaining the written approval of Department. The Concessionaire shall be responsible for obtaining all Department and other government or agency written approvals and permits prior to the start of construction.

UTILITIES

Concessionaire is responsible for the payment of any and all utility charges related to the Concession Operation on the Concession Premises for the duration of the Agreement, except to the extent that said charges are attributable to the Department's use of the Concession Premises.

GARBAGE DISPOSAL, RECYCLING, AND BIODEGRADABLE MATERIALS

A. Concessionaire shall be responsible for maintaining the cleanliness of the Concession Premises. Concessionaire shall ensure placement of trash containers in the designated bus parking areas as approved by the Department. Trash containers must be emptied daily, or as more frequently required. Disposal costs from this location shall be borne by the Concessionaire. Concessionaire shall provide such additional trash containers as may be required to keep the immediate Concession Premises clean at all times. The type of trash containers provided by the Concessionaire shall be approved by the Department prior to installation.

B. Concessionaire shall comply with any and all recycling requirements and regulations promulgated by the Department's Office of Recycling.

C. Any wrappings, containers, bowls, plates, carton, or cups that are not intended for reuse must be composed of biodegradable material. Biodegradable material is defined as follows: MATERIAL CAPABLE OF BEING BROKEN DOWN FROM A COMPLEX MOLECULAR STRUCTURE INTO SIMPLER GASSES AND ORGANIC COMPOUNDS BY LIVING MICROORGANISMS.

D. No glass containers of any kind shall be used in the dispensing of food and/or beverages.

TAXES

All taxes and assessments, if any, arising out of the use and occupancy of the Concession Premises and the operation of the Concession shall be paid by Concessionaire. If any tax or assessment may be legally paid in installments, Concessionaire shall have the option to pay such tax or assessment in installments, except that each installment thereof and all interest thereon must be paid by the final date fixed for the payment thereof, and in the event that the whole amount thereof is not paid prior to the expiration of the Agreement, payment shall remain a continuing obligation of Concessionaire after the expiration or termination of the Agreement. Concessionaire shall furnish to Department, within ten (10) days of demand therefor, proof of the payment of any such tax or assessment.

RULES AND REGULATIONS

Concessionaire shall comply with all rules and regulations promulgated by the Department and all applicable rules and regulations promulgated by the New Jersey State Department of Health and Senior Services.

ADVERTISEMENT AND PROMOTION

A. Concessionaire shall not advertise in any manner or form on or about the Concession Premises or any other part of the Area, except by means of such signs or forms of advertising as first shall be approved by the Department.

B. Concessionaire shall, in all promotion and advertisement of the Concession Premises and any scheduled event(s) at or pertaining thereto, provide that the Concession Premises is administered by the State of New Jersey, Department of Environmental Protection, Division of Parks and Forestry, as part of the Area.

C. Prior to the implementation of any and all promotion and advertisement of the Concession Premises and any scheduled event(s) at or pertaining thereto, Concessionaire shall submit, and obtain Department's written approval of, all plans for promotion and advertisement of the Concession Premises. Such approval shall not be unreasonably withheld. In the event that Department does not approve or disapprove an advertisement or promotion plan within fifteen (15) days of receipt thereof, said advertisement and promotion plan shall be deemed as approved.

REPORT OF INJURY

Any injury that shall occur to Concessionaire, its servants, agents, or invitees requiring medical intervention of which Concessionaire is notified, shall be reported to Department in writing within one (1) day of the incident.

SOLICITATION

Concessionaire warrants that no person has been employed directly or indirectly to solicit or secure the Agreement in violation of the provision of Section 10, Chapter 48 of the Laws of 1954, N.J.S.A. 52:34-15, and that the Laws of the State of New Jersey relating to the procurement or performance of the Agreement have not been violated and shall not be violated by any conduct of Concessionaire, including the paying or giving directly or indirectly of any fee, commission, compensation, gift, gratuity, or consideration of any kind to any State employee, officer, or official.

INDEPENDENT PRINCIPAL

Concessionaire's status shall be that of an independent principal and not as an agent or employee of the Department.

INDEMNIFICATION

A. Concessionaire shall, for itself, its successors, and assigns, assume all risk and liabilities arising out of the management, maintenance, and operation of the Concession and covenants to defend, protect, indemnify, and save harmless Department and each and every of its officers, agents, employees, successors, and assignees and hereby releases Department and each and every of its officers, agents, employees, successors, and assignees from and against any and all such liabilities, losses, damages, costs, expenses (including reasonable attorney's fees and expenses), causes of action, suits, claims, demands, or judgments of any nature arising from the following:

(i) any injury to, or the death of, any person in or on or any damage to property which occurs in, on, or about the Concession Premises or upon any sidewalk, walkway, or patio within the Concession Premises or in any manner growing out of or connected with the use, non-use, condition, or occupancy of the Concession Premises or the construction or repair of any improvements of the Concession Premises;

(ii) any act, error, or omission of Concessionaire, its agents, servants, employees, contractors, invitees, and anyone claiming by or through Concessionaire in the performance of the Agreement; and

(iii) violation of any agreement or condition of the Agreement by Concessionaire, its agents, employees, contractors, invitees, and anyone claiming through Concessionaire of any contracts and agreements of record concerning the Concession Premises and restrictions of record or any law, ordinance, or regulation affecting the Concession Premises or any part thereof or the ownership, occupancy, or use thereof.

B. Department shall, as soon as practicable after a claim has been made against it, give written notice thereof to Concessionaire, along with full and complete particulars of the claim. If suit is brought against Department or any of its agents, servants, and/or employees, Department shall expeditiously forward or have forwarded to Concessionaire every demand, complaint, notice, summons, pleading, or other document received by or then in the possession of Department or its representatives.

C. It is expressly agreed and understood that any approval by Department of Concessionaire's operation of Concession Premises shall not operate to limit the obligations of Concessionaire assumed pursuant to the Agreement.

D. Concessionaire's liability pursuant to this Paragraph shall continue after the termination or expiration of the Agreement with respect to any liability, loss, expense, or damage resulting from acts occurring prior to such termination or expiration.

E. Concessionaire's indemnification obligations are not limited by, but are in addition to, the insurance obligations contained in the Agreement.

INSURANCE

A. Concessionaire shall, for each Concession Operation described in the Agreement, secure and maintain, in full force and effect on or before the date that Concessionaire is required to commence annual operation of each concession facility under the Agreement and throughout the term of Concessionaire's annual occupancy thereof, the following types and amounts of insurance coverage:

1. Public liability as broad as the standard coverage forms currently in use in the State of New Jersey which shall not be circumscribed by any endorsements limiting the breadth of coverage. The policy shall be endorsed to include the following:

- (a) Broad Form Comprehensive General Liability;
- (b) Premises/Operations;
- (c) Products/Completed Operations;
- (d) Protection and Indemnity; and
- (e) Concessionaire owned, operated, or non-owned motor vehicles.

The limits of liability for Bodily Injury and Property Damage shall not be less than ***One Million Dollars (\$1,000,000.00)*** per occurrence combined single limits for each location covered by the Agreement.

2. Worker's Compensation insurance applicable to the laws of the State of New Jersey and Employers' Liability insurance with the limits of not less than:

- (a) \$100,000.00 Bodily Injury Each Occurrence
- (b) \$100,000.00 Disease Each Employee
- (c) \$500,000.00 Disease Aggregate Limit

3. Property insurance to cover loss or damage on an "All Risk" of physical loss form of coverage against fire, loss, theft, and damage on the contents of the Concession Premises owned by Concessionaire. Said insurance shall be in an amount not less than the appraised value of those contents. Concessionaire shall obtain and provide, at its own expense, an appraisal of the contents owned by Concessionaire for the purpose of obtaining and maintaining the aforementioned insurance.

4. Such other insurance, and in such amounts as may from time to time be reasonably required by Department in consultation with Concessionaire against other insurable hazards which at the time are commonly insured against in the case of concession operations similarly situated with due regard to the type of building, its construction, and the type of concession operation.

5. The limits of liability described in (1) through (4) above shall be increased from time to time to meet changed circumstances, including but not limited to changes in the purchasing power of the dollar, as measured by changes in the United States Consumer Price Index and changes indicated by plaintiffs' verdicts in personal injury actions.

B. All insurance policies providing the coverage required under the Agreement shall be obtained from an insurance company authorized to do business in the State of New Jersey and shall, except for Worker's Compensation Insurance under the Agreement, name the State of New Jersey, Department of Environmental Protection as an "Additional Insured." Prior to the date that Concessionaire is required to commence annual operation of the Concession Premises, Concessionaire shall provide Department with a current certificate of insurance, in form and substance satisfactory to the Department, showing that Concessionaire has obtained the insurance coverages required in the Agreement for the Concession Operation. The certificate shall provide that the insurance coverages shall not be canceled for any reason, except after thirty (30) days' written notice to:

STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
NATURAL & HISTORIC RESOURCES
OFFICE OF CONCESSIONS
MAIL CODE: 501-04C, P.O. BOX 420
TRENTON, NEW JERSEY 08625-0420

The certificate of insurance shall also provide for thirty (30) days' notice, in writing, to Department prior to any expiration or non-renewal during the term the insurance is required to be maintained in accordance with the Agreement. Concessionaire shall further be required to provide Department with valid certificates of renewal of the insurance upon expiration of the policies, except where otherwise provided in this Paragraph. Concessionaire also shall, upon request, provide Department with copies of each policy required under the Agreement certified by the agency or underwriter to be true copies of the policies provided to Concessionaire.

C. In the event that Concessionaire fails or refuses to renew any of its insurance policies to the extent required by the Agreement, or if any policy is canceled, terminated, or modified so that the insurance does not meet the requirements of the Agreement, Department may immediately suspend all of Concessionaire's operations on the Concession Premises until Concessionaire obtains insurance coverage in satisfactory form and in compliance with the Agreement or may proceed to default Concessionaire and terminate the Agreement.

D. Concessionaire expressly understands and agrees that any insurance protection required by the Agreement shall in no way limit Concessionaire's obligations under the Agreement and shall not be construed to relieve Concessionaire from liability in excess of such coverage, nor shall it preclude Department from taking such other actions as are available to it under any provisions of the Agreement or otherwise in law or equity.

COMPLIANCE WITH LAWS, LICENSES, PERMITS, AND INSURANCE POLICIES

A. For the duration of the Agreement, Concessionaire shall obtain, pay for, maintain, and comply with all licenses, permits, authorizations, or any other documents required by any applicable government agency having jurisdiction over the Concession Premises or the conduct of Concessionaire's operations thereon. Concessionaire shall provide Department with written evidence that such applicable licenses, permits, authorizations, or other required documents have been obtained no later than ten (10) days prior to commencement of the activity or operation covered by the license, permit, authorization, or other documentation as shall be required by the Agreement.

B. Concessionaire shall, at its sole cost and expense, comply with all duly promulgated and applicable federal and State laws, rules, ordinances, and orders affecting the conduct of the Concession Operation described in the Agreement.

C. Concessionaire shall comply with the requirements of all insurance policies required by the Agreement.

D. If Concessionaire:

(i) receives a notice of failure to comply with the insurance required by the Agreement;

(ii) is issued a summons or any notice of violation of any license, permit, certification, authorization, approval, or any similar instruments required by any governmental authority having jurisdiction necessary to maintain and operate the Concession in accordance with the provisions of the Agreement; or

(iii) is issued a summons for violation of any duly promulgated and applicable federal, State, county, municipal, and other governmental laws, rules, ordinances, or orders affecting the Concession Operation or any part thereof,

Concessionaire shall immediately forward a copy of the notice of non-compliance, summons, or notice of violation to Department, and Concessionaire shall have such amount of time to correct said violation as is prescribed in the notice or summons. If such violation is not cured within the prescribed period or any extension thereof, it shall be deemed a material breach of the Agreement, and Department, in addition to declaring a default of the Agreement by Concessionaire, may suspend Concessionaire's operation of all or the affected portion of the Concession Premises.

E. Concessionaire shall indemnify Department against all liability, claim, loss, or payment of any kind arising from Concessionaire's failure or omission to comply with any such insurance policy, license, permit, certification, authorization, approval, or any applicable federal or State law, rule, ordinance, or order.

PUBLIC USE

Concessionaire shall not be construed as to affect the privileges accorded to the public's use of the area or to restrain or prevent individual persons or groups of persons from bringing their own food, drink, and recreational equipment into the Area.

NO DISCRIMINATION

A. Concessionaire shall comply with Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d-2000d-4); the discrimination and affirmative action provisions of N.J.S.A. 10:2-1 through 10:2-4; the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq.; and the rules and regulations promulgated pursuant thereto.

B. Concessionaire shall not discriminate on the basis of age, national origin, race, creed, color, sexual orientation, or sex in the use of the Concession Premises by the public.

C. Concessionaire shall not discriminate against any employee or applicant for employment because of national origin, race, creed, color, sexual orientation, or sex. This provision shall include but not be limited to the following: employment; upgrading; demotion; transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

SUSPENSION OF OPERATIONS:

Concessionaire shall, at the direction of Department, immediately suspend, delay or interrupt Concessionaire's operation of all or any part of the Concession Premises for such period of time as Department may determine to be appropriate to protect the Concession Premises and/or public health, safety and welfare due to the occurrence of hazardous work conditions, emergency conditions, and/or any other cause including, but not limited to, Concessionaire's failure to perform any of the covenants, agreements and conditions contained in this Agreement on its part to be

performed provided that Department has determined that the continuance of the operation of the Concession may detrimentally impact the Concession Premises and/or health, safety and welfare of persons on-site. Concessionaire hereby waives any claim and Department shall not be liable to any party claiming through Concessionaire, for damages, payment abatement, or compensation as a result of Department's actions under this Paragraph. Department's suspension of Concessionaire's operations shall be in addition to any other right or remedy available by law or in equity.

CLOSURE

A. In the event that Concessionaire is unable to operate the Concession Premises for any reason the Department shall not be liable for any loss of revenues or damages resulting from the full or partial closure of the Concession Premises.

FINAL DECISION

Concessionaire covenants that the decision of the Commissioner of the Department, relative to the performance of the terms of the Agreement, shall be final and conclusive.

CORPORATION

A. For any Concessionaire that presents itself or represents itself as a corporation operating or doing business in the State of New Jersey, all papers of incorporation shall be provided to Department, along with renewals, changes, or any other documents that in any way affect the current or future status of Concessionaire as a legal corporation.

B. Concessionaire shall adopt a resolution authorizing the execution of the Agreement by Concessionaire. Concessionaire shall submit a copy of said resolution to Department prior to execution of the Agreement by Department.

ASSIGNMENT OR SALE OF INTERESTS

Concessionaire shall not assign the Agreement or sell controlling interest in the Concession without first obtaining the express written approval of Department.

PAY TO PLAY

Concessionaire is responsible to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC) pursuant to N.J.S.A. 19:44A-20.13 (P.L. 2005, c.271, section 3) if the contractor receives contracts in excess of Fifty Thousand (\$50,000) dollars from a public entity in a calendar year. It is the contractor's responsibility to determine if filing is necessary. Failure to so file can result in the imposition of financial penalties by ELEC. Additional information about this requirement is available from ELEC at 888-313-3532 or at www.elec.state.nj.us.

ENTIRE AGREEMENT

This Agreement represents the entire agreement between the parties, and all negotiations, oral agreements, and understandings are merged herein. This Agreement may be amended, supplemented, changed, modified, or altered only upon mutual agreement of the parties hereto in writing.

WAIVER OF TRIAL

It is mutually agreed between Department and Concessionaire that they hereby waive trial by jury in any action, proceeding, or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Agreement or the relationship of the Department and Concessionaire, the Concessionaire's use or occupancy of the Concession Premises, and/or any claim of injury of damage.

SUBMISSIONS, APPROVALS, AND NOTICES

The parties hereto agree that all submissions, approvals, and notices that may be required under this Agreement shall be forwarded by certified mail, return receipt requested to the address that appears on page one (1) of this Agreement. Either Department or Concessionaire may at any time change such address by mailing a notice of change to the stated address at least ten (10) days prior to the effective date of such change.

WAIVER

Failure of either party to complain of any act or omission on the part of the other party, no matter how long same may continue, shall not be deemed a waiver by said party of any of its rights hereunder. No waiver by either party at any time, express or implied, of breach of any provision of this Agreement shall be deemed waiver of breach of any other provision or a consent to any subsequent breach of the same or any other provision. The consent to or approval of any action on any one occasion by either party hereto shall not be deemed a consent to or approval of any other action on the same or any subsequent occasion. Any and all rights and remedies that either party may have under this Agreement or by operation of law, either at law or in equity, by reason of a breach by the other party, shall be distinct, separate, and cumulative and shall not be deemed inconsistent with any other right or remedy, and any two (2) or more or all of such rights and remedies may be exercised at the same time. Acceptance by either party of any of the benefits of this Agreement with knowledge of any breach thereof by the other party shall not be deemed a waiver by the party receiving the benefit of any rights or remedies to which it is entitled hereunder or by law.

SUPERSEDES

This Agreement supersedes and cancels all prior agreements covering the Concession Premises.

SUCCESSION AND BINDING AGREEMENT

Except as otherwise set forth herein, all of the terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the successors and assignees of the respective parties hereto and binding on Trustee in bankruptcy.

HEADINGS

The article, paragraph, and subparagraph headings throughout this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

NEGOTIATION AND BEST AND FINAL OFFER (BAFO)

After evaluating proposals, the Department may enter into negotiations with one bidder or multiple bidders. The primary purpose of negotiations is to maximize the State's ability to obtain the best value based on the mandatory requirements, evaluation criteria, and price (rent). Multiple rounds of negotiations may be conducted with one bidder or multiple bidders. Negotiations will be structured by the Department to safeguard information and ensure that all bidders are treated fairly.

Similarly, the Department may invite one bidder or multiple bidders to submit a best and final offer (BAFO). Said invitation will establish the time and place for submission of the BAFO. Any BAFO that is not higher in price than the pricing offered in the bidder's original proposal will be rejected as non-responsive and the Department will revert to consideration and evaluation of the bidder's original pricing.

If required, after review of the BAFO(s), clarification may be sought from the bidder(s). The Department may conduct more than one round of negotiation and/or BAFO in order to attain the best value for the State.

Negotiations will be conducted only in those circumstances where they are deemed by the Department to be in the State's best interests and to maximize the State's ability to get the best value. Therefore, the bidder is advised to submit its best technical and price proposal in

response to this RFP since the State may, after evaluation, make a contract award based on the content of the initial submission, without further negotiation and/or BAFO with any bidder.

All contacts, records of initial evaluations, any correspondence with bidders related to any request for clarification, negotiation or BAFO, any revised technical and/or price proposals, the Evaluation Committee Report and the Award Recommendation, will remain confidential until a Notice of Intent to Award a concession is issued.

NOTE: If the Division contemplates negotiation, proposal prices will not be publicly read at the proposal submission opening. Only the name and address of each bidder will be publicly announced at the proposal submission opening.

GOVERNING LAW

This Agreement shall be governed by and interpreted in accordance with the Laws of the State of New Jersey.